

A. G. Contract No. KR98-2422TRN
ADOT ECS File: JPA 98-185
Project: STP-000-6(121)P
TRACS: SR137 01C
Section: Gates Road (Maricopa County)
AAR/DOT No. 025-379-L

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
MARICOPA COUNTY, ARIZONA

THIS AGREEMENT is entered into 2 June, 1999, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and MARICOPA COUNTY, ARIZONA acting by and through its BOARD OF SUPERVISORS (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The County is empowered by Arizona Revised Statutes Section 11-251 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.
3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.
4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances
5. Such project within the boundary of the County has been selected by the County; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.
6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 23267
Filed with the Secretary of State
Date Filed: 06/02/99
Petrey Gayless
Secretary of State

By Dick V. Graenewald

7. The work embraced in this agreement and the estimated cost are as follows:

Furnish and install Flashing Lights Engineering and Automatic Gates (by railroad forces)	\$155,564.00
Total Protection Work	=\$155,564.00
Install Concrete Crossing Surface (by railroad forces)	\$ 59,950.00
Total Roadway Work	\$ 59,950.00
Total Project	=\$215,514.00
Federal Aid Funds @ 94.3 of \$215,514.00	=\$203,230.00
AZ Corp. Comm. Funds @ 5.7% of \$155,564.00	=\$ 8,867.00
Maricopa County Funds @ 5.7% of \$59,950.00	=\$ 3,417.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County.

2. The County shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the County shall remove from the County right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The County shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the County right of way.

5. Upon completion of construction, the County shall provide (exclusive of maintenance by the Railroad Company of its facilities) traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The County shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

7. By such regulation as it may by ordinance provide, the County shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the County for the benefit the State in no way acts as a waiver by the County for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

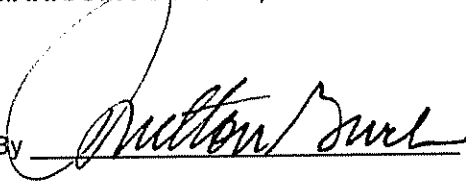
Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Maricopa County Highway Department
Project Manager
2901 W. Durango Street
Phoenix, AZ 85009

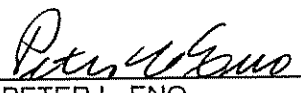
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

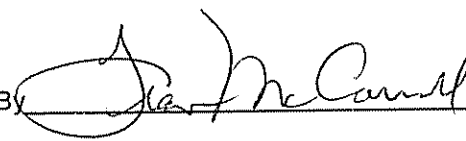
MARICOPA COUNTY, ARIZONA

By 
Board of Supervisors

STATE OF ARIZONA
Department of Transportation

By 
PETER L. ENO
Contract Administrator

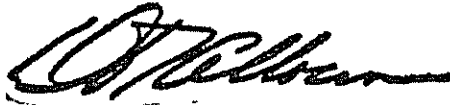
ATTEST:

By 
Clerk of the Board

RESOLUTION

BE IT RESOLVED on this 20th day of October 1998, that I, the undersigned MARY E. PETERS, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the County of Maricopa, for the purpose of defining responsibilities for the design and construction and maintenance of improvements to Burlington Northern and Santa Fe at Gates Road.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.

A handwritten signature in black ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, P.E.
Assistant State Engineer
Engineering Technical Group

for MARY E. PETERS, Director

Agenda Activity: Action **Agenda Number:** C-64-99-184-2-00
Department: Transportation
Category: Chief Public Works Officer
Contact: Renate Lewis **Phone:** 506-8647 **Continued from:**
Return to: April Champion - Brenda Zambelli **Phone:** 506-4640
Location: DEPT OF TRANSPORTATION ADMIN BLDG

Action Requested:

Approve an Intergovernmental Agreement with the Arizona Department of Transportation for the purpose of obtaining Federal Aid Funds and Arizona Corporation Commission Funds in order to purchase and install flashing lights and automatic gates at the Gates Road railroad crossing, Work Order No. 68715.

Complete description of action requested:

Under the term of the IGA the Arizona Department of Transportation will obtain the funds on behalf of the County. Funds for this project are derived from the following sources: • Federal Aid Funds @ 94.3% of \$215,514 (entire project costs) which equals \$203,230. • AZ Corp. Commission @ 5.7% of \$155,564 (cost for engineering and installation of flashing lights and automatic gates) which equals \$8,867. • Maricopa County @ 5.7% of \$59,950 (cost of concrete crossing surface) which equals \$3,417. The County total financial commitment toward this project is therefore \$3,417, which has been budgeted in the Department's Capital Improvement Project Budget for fiscal year 1998/99. Supervisory District No. 4

Expenditure Impact by FY(s):

FY 98 \$3,417.00. The County total financial commitment toward this project is therefore \$3,417, which has been budgeted in the Department's Capital Improvement Project Budget for fiscal year 1998/99 under Work Order No. 68715.

Routing: Meeting Date: 03/17/1999		
Legend X=Pending A=Approved R=Rejected		
LEGAL	MATL_MNGT	OMB
A	A	A

Notes Created: 02/24/1999

Author: April Champion

Note Type: Internal Dept Only

Notes:

Per renate Lewis this item is ready for approval.

Notes Created: 02/24/1999

Author: Donald Colvin

Note Type: COB, Dept, Reviewers

Notes:

REJECT NOTES: Per A. Champion reject to clarify wording in the description and correct budget #'s. POC is Angela Gee 506-2272.

Notes Created: 02/25/1999**Author: April Champion****Note Type: Internal Dept Only****Notes:****This item is ready for reapproval.****Status for Agenda Number C-64-99-184-2-00**

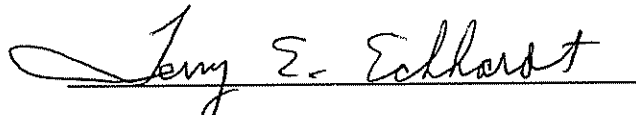
Dept Head Approval	Approved	THOMAS R. BUICK	2/25/99 5:05:57 PM
Chief Officer Approval	Approved	THOMAS R. BUICK	2/25/99 5:07:16 PM
Materials Management	Approved	WESLEY W. BAYSINGER	3/1/99 5:14:21 PM
OMB	Approved	DONALD R. COLVIN	2/26/99 10:42:44 AM
Legal	Approved	TERRY ECKHARDT	2/26/99 8:42:35 AM
County Administrator's Office	Approved	CHRISTINE M. PINUELAS	3/16/99 11:43:39 AM
Board of Supervisors	Approved	FRAN M. MCCARROLL	03/17/1999

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APPROVAL OF THE MARICOPA COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and MARICOPA COUNTY and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

DATED this 25th day of February 1999.


County Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

JANET NAPOLITANO
ATTORNEY GENERAL

TRN Main: (602) 542-1680

Direct: (602) 542-8837

Fax: (602) 542-3646

MAIN PHONE: (602) 542-5025

FACSIMILE: (602) 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR98-2422TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED May 20, 1999.

JANET NAPOLITANO
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/21052

Enc.